

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE: FIRED UP, INC. DEBTOR¹	§ § § § §	CASE NO. 14-10447-tmd (Chapter 11)
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**OBJECTION TO APPLICATION FOR APPROVAL OF EMPLOYMENT OF FTI
CONSULTING, INC. AS FINANCIAL ADVISOR FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS**

TO THE HONORABLE JUDGE OF SAID COURT:

Fired Up, Inc. (the "Debtor") hereby files this Objection to Application for Approval of Employment of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors.

1. The Official Committee of Unsecured Creditors has filed applications to employ three professionals as follows:

Professional	Position	Hourly Rates (not including paraprofessionals)
Pachulski Stang Ziehl & Jones, LLP	Counsel for Official Committee of Unsecured Creditors	\$475-775/hr.
Streusand, Landon & Ozburn, LLP	Local Counsel for Official Committee of Unsecured Creditors	\$325-440/hr
FTI Consulting, Inc.	Financial Advisor for the Official Committee of Unsecured Creditors	\$300-\$925/hr.

¹ Until February 26, 2014, Debtor's business was being operated partially by the Debtor, partially by Kona Restaurant Group, Inc. ("KRG"), a Delaware corporation wholly owned by the Debtor, and partially by Carino's Italian Kitchen, Inc. ("CIK"), a Delaware corporation wholly owned by KRG. CIK was merged into KRG in Delaware and KRG was merged in to the Debtor, a Texas corporation, in Texas.

2. Under Fed.R.Bankr.P. 2014(a), an application to employ a professional shall state “the specific facts showing the necessity for the employment.” The FTI application does not state why the Committee needs a financial advisor. This is particularly important since a “financial advisor” is not a type of professional mentioned in the Bankruptcy Code. The list of services to be performed by the proposed Financial Advisor in its application appears to be a standard list of services many of which are not applicable to this case. They include, by way of example:

b) Assistance in the preparation of analyses required to assess any proposed Debtor-In-Possession ("DIP") financing or use of cash collateral (the Debtor did not seek DIP financing and a final cash collateral order is already in place);

d) Assistance with the review of any proposed key employee retention and other employee benefit programs (the Debtor did not propose any KERPs).

The tasks to be performed also include numerous items identified as assistance with the review of various items, such as the Debtor’s analysis of core business assets, the Debtor’s cost/benefit analysis for assumption and rejection of leases, etc. Most business bankruptcy lawyers have more than a passing knowledge of financial matters. As a result, there is no showing why another professional is needed to assist in reviewing these items.

3. The hourly rates requested in the application grossly exceed the prevailing market rates in the Western District of Texas. The rates sought to be charged range from \$300-\$550 per hour for consultants and senior consultants to \$800-\$925 per hour for senior managing directors. The application and accompanying disclosures do not provide any information as to the individuals contemplated to be part of the engagement team. However, the individual who signed the disclosures, Steven Simms, is a Senior Managing Director in the firm’s New York Office. This means that at least one person involved in the representation would be charging at least \$800 per hour, an amount which exceeds the billing rates of *all* of the attorneys sought to be engaged by the Debtor or the Committee. There is no justification as to why this case needs ultra-expensive

consultants from New York. The excessive rates requested are also problematic for the reason that employment is sought under 11 U.S.C. §328(a). If employment is allowed under this section, the Court may not reconsider the rates being sought unless its approval was “improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” As a result, employment should be denied under section 328(a).

4. The proposed Financial Advisor’s Application mandates that the Debtor provide it with indemnification on specified terms. The Debtor does not agree to voluntarily indemnify a professional it has not retained and whose services appear to be unnecessary, nor can it be compelled to do so.

5. The Application allows the proposed Financial Advisor to seek reimbursement for its legal fees. It is not appropriate for professionals to hire other professionals and have their costs paid by the estate.

6. The Application should not be approved until the firm provides a complete conflicts check. According to the application, the firm’s conflicts check was limited to the Debtor, the Debtor’s interest holders, the Debtor’s known directors and officers, the Debtor’s known secured creditors, the Debtor’s professionals, the members of the committee and the Debtor’s 20 largest unsecured creditors. Fed.R.Bankr.P. 2014(a) requires the applicant to disclose *all* known connections with “creditors,” not just some creditors. Additionally, the firm does not disclose its connections with professionals hired in the case other than Barron & Newburger, P.C. This is not merely a hypothetical concern because, on information and belief, FTI Consulting has been hired on multiple other occasions by committees represented by Pachulski Stang Ziehl & Jones.

WHEREFORE, PREMISES CONSIDERED, Debtor prays that the Court deny or approve on conditions the Application to Employ FTI Consulting, Inc., and for such other and further relief, at law and in equity, to which it may be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served on the 14th day of May, 2014, by email transmission to all the parties on the Sixth Limited Master Service List attached hereto. Copies of the matrix are not included in the copies served by United States Mail but may be obtained from the Clerk of the Court or Debtor's counsel.

/s/Stephen W. Sather

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